

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSEMARIE E. LESTINO and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 00-1300; Submitted on the Record;
Issued April 23, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an emotional condition in the performance of duty.

This case has previously been before the Board,¹ which found that the evidence did not support appellant's version of an October 25, 1994 incident involving a dispute with her supervisor and that appellant had not substantiated that she had to work without error or that she was harassed. The Board found that appellant had substantiated one compensable factor of employment: A January 1994 incident in which her supervisor yelled at her when she reported a machinery malfunction to the front office. The Board remanded the case to the Office of Workers' Compensation Programs for further development, to be followed by a *de novo* decision.

By letter dated November 18, 1998, the Office requested that the employing establishment provide information on how often the machinery malfunctions occurred and how this affected appellant's productivity. By letter dated November 19, 1998, the Office requested further information from appellant on these issues and a comprehensive medical report from her treating physician explaining how employment incidents contributed to her emotional condition.

In a reply dated December 12, 1998, appellant's supervisor, Leroy Nesbitt, stated that malfunctions were not due to maintenance of the machine but rather to appellant allowing the bins on the machine to fill with mail while she was talking. Mr. Nesbitt stated that another incident of appellant "not clearing full bins occurred one other time during the week prior to this incident" and went on to describe the October 25, 1994 incident. Appellant's supervisor attached a copy of the daily preventive maintenance schedule for the machines used by appellant.

¹ Docket No. 97-274 (issued November 2, 1998).

By decision dated January 6, 1999, the Office found that any problem appellant had with the machinery was self-generated and that she had not established any compensable factors of employment.

In a statement dated December 5, 1998,² appellant asserted that the machine malfunctioned “numerous” times, that this made it hard to reach production goals and that the employing establishment first began to close down the machines in the early morning for cleaning and maintenance around April 1998. In a statement dated January 17, 1999, appellant added that prior to March 31, 1998 the employing establishment “did not close all the machines down for maintenance,” that it was not true that her productivity was affected by excessive talking and that she made her goals every day despite her supervisor.

At a hearing held on July 28, 1999 appellant testified that the machines “jammed a lot” because of bad mail, dirt and belts going bad, that a lot of times she was unable to unjam them herself and that this was frustrating because of the daily quotas. In a statement dated August 11, 1999, a former supervisor stated, “[T]here are a multitude of reasons a jam can occur, improper loading of the machine, mail with hard or unbendable objects in them, flimsy mail, or in some cases a machine malfunction.”

By decision dated November 12, 1999, an Office hearing representative found that the evidence established that jams or malfunctions occurred on occasion, but that neither appellant nor the employing establishment had been specific about the frequency of such occurrences. The Office hearing representative found that these jams or malfunctions were a compensable factor of employment, but that appellant’s statement that the machines were always jamming and stopping was “clearly a gross exaggeration, as she would never have been able to process mail and meet her quotas under such circumstances.”

The Office hearing representative found that appellant had substantiated two compensable factors of employment: The malfunctioning or jamming of the machines on occasion and the January 1994 incident in which a jam occurred and mail fell to the floor and appellant’s supervisor verbally abused her. The Office hearing representative found that the medical evidence was not sufficient to establish appellant’s claim, as her treating psychiatrist attributed her condition to an inaccurate history of repeated malfunctions followed by verbal abuse from her supervisor.

The Board finds that appellant has not established that she sustained an emotional condition in the performance of duty.

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to his regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’

² This statement was received by the Office on January 4, 1999, but was not reviewed by the Office in the January 6, 1999 decision.

Compensation Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position.³

In this case, the Board, on a prior appeal, found that the evidence did not support appellant's version of an October 25, 1994 incident involving a dispute with her supervisor and that appellant had not substantiated that she had to work without error or that she was harassed. No additional evidence that would support a different conclusion was submitted subsequent to the Board's November 2, 1998 decision.

Consistent with the Board's November 2, 1998 decision, the Office further developed the evidence regarding malfunctions of the machines on which appellant performed her work duties. Following such development, the Office properly found that appellant had established another compensable factor of employment: That jams or malfunctions of the machines occurred on occasion.

The Office also properly found that the medical evidence was not sufficient to meet appellant's burden of proof to establish her claim.⁴ In a report dated November 28, 1994, appellant's attending Board-certified psychiatrist, Dr. Arnold D. Goldman, attributed appellant's emotional condition, which he diagnosed as an adjustment disorder with mixed emotional features of depression and anxious mood, to harassment at work. In its prior decision, the Board found that appellant had not established that she was harassed.

In a report dated April 4, 1996, Dr. Goldman, after referring to appellant's testimony at the December 5, 1995 hearing, concluded:

"In summary, it is clear to me that [appellant] had problems operating the postal machine because of mail falling off the belt, or the machine jamming, or some other malfunction taking place. This may have been a function of her carpal tunnel syndrome or her unfamiliarity with the machine in the beginning. [Appellant] felt additional pressure to perform perfectly and not have the machine break down because of Mr. Nesbitt's response to her -- that is, yelling and screaming (as documented) and blaming her for the defect. These repeated episodes, according to [appellant's] testimony, conditioned her to become more and more frightened operating the machine, possibly causing more frequent episodes of machine malfunction, further reinforcing Mr. Nesbitt's response to her and her feeling of inadequacy. There is testimony about Mr. Nesbitt's behavior from other people confirming his responses. Other employees indicated the vindictiveness of Mr. Nesbitt. The fact that [appellant] could not seek help from Mr. Nesbitt or go above [his] head for fear of retaliation, further hampered

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. *Bruce E. Martin*, 35 ECAB 1090 (1984).

her ability to operate the machine, something she viewed as having to be done in a perfect fashion.

“It is important to note that [appellant] had no difficulty working at the [employing establishment] in years prior to this incident. She had no prior psychiatric history. [Appellant] was more prone to the emotional decompensation she suffered. It is a fact that she could not operate the machine and felt both internal and external pressure to be perfect at it -- she broke under the strain because she was never able to master it.”

The April 4, 1996 report from Dr. Goldman is not sufficient to meet appellant’s burden of proof because it is based on a history of “repeated episodes” of yelling and screaming by appellant’s supervisor, which were not accepted by the Office and are not substantiated by the evidence in the record. Dr. Goldman stated that the October 24, 1994 incident “seemed to be the culmination of her trying to operate the machine.” The Board did not accept, in its prior decision, appellant’s version of this incident, upon which Dr. Goldman relied. The Board also found that appellant had not substantiated that she had to work without error. This is the factor to which Dr. Goldman attributes appellant’s emotional condition at the end of his report.

The November 12, 1999 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, DC
April 23, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member